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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 04 2010

WAC-07-278-50752

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry concerning your case must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an IT services and products company. It seeks to employ the beneficiary permanently in the United States as a senior software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Permanent Employment Certification (ETA 9089) approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a U.S. Bachelor's degree or foreign equivalent degree in the field required by the certified ETA 9089.

On appeal, the petitioner submits the beneficiary's bachelor of engineering degree and transcripts from the University of Mumbai, India and an academic evaluation from Trustforte Corporation and asserts that the beneficiary possesses a foreign degree which is equivalent to a U.S. bachelor's degree in computer science, engineering, technology or science.

The record shows that the appeal is properly and timely filed, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The AAO conducts appellate review on a *de novo* basis. The AAO's de novo authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

The record contains the beneficiary's bachelor of engineering degree in electronics engineering and transcripts from the University of Mumbai. The degree and transcripts indicate that the beneficiary

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

was awarded the bachelor's degree upon completion of his four years of study at the University of Mumbai. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).

In determining whether the beneficiary possessed a U.S. bachelor's degree in computer science, engineering, technology or science or a foreign equivalent degree, this office has also reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.accrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

EDGE provides a great deal of information about the educational system in India, and while it does not suggest that a three-year degree from India, such as Bachelor of Arts, Bachelor of Science or Bachelor of Commerce, may be deemed a foreign equivalent degree to a U.S. baccalaureate, it confirms that the Bachelor of Engineering/Technology awarded upon completion of four years of tertiary study beyond the Higher Secondary Certificate (or equivalent) represents attainment of a level of education comparable to a bachelor's degree in the United States.

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study."

In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2).

Here the record shows that the University of Mumbai is an accredited college or university in India. The beneficiary provides the transcripts from the University of Mumbai which show that the beneficiary is awarded the baccalaureate degree on December 12, 1997 upon completion of four years of study in electronics engineering. The beneficiary's bachelor of engineering degree in electronics engineering is a single degree that is the foreign equivalent degree to a U.S. baccalaureate degree. Therefore, the beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," and thus, meet the minimum level of education required for the equivalent of an advanced degree, namely a Bachelor's degree, for preference visa classification

under section 203(b)(2) of the Act. Accordingly, the portion of the director's decision that the beneficiary does not possess a foreign degree that is equivalent to a U.S. baccalaureate degree in computer science, engineering, technology or science must be withdrawn.

However, to qualify for the second preference classification, the beneficiary must establish that he possessed at least five years of progressive experience in the specialty after his bachelor's equivalent degree but prior to the priority date.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

In this matter, Part H, line 4, of the labor certification reflects that a bachelor's degree is the minimum level of education required. Lines 6 and 10 reflect that the proffered position requires 60 months (five years) of experience in the job offered or in an alternate occupation of senior programmer analyst.

The beneficiary set forth his credentials on ETA Form 9089 Sections J and K and signed his name on July 20, 2007 under a declaration that the sections J and K are true and correct under the penalty of perjury. On Section K, eliciting information of the beneficiary's work experience, he represented that he has been working for the petitioner as a full-time senior software engineer since February 8, 2006. Prior to that, he worked as a full-time senior software engineer for [redacted] in Mumbai, India from June 15, 2000 to December 17, 2002; for [redacted] in Pune, India from December 17, 2002 to August 8, 2005; and for [redacted]. in North Carolina, USA from August 8, 2005 to February 8, 20906. He does not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The record contains letters from the beneficiary's current and former employers pertinent to the beneficiary's progressive five years of experience in the job offered or as a senior programmer analyst prior to the priority date in this case. The letter dated March 15, 2007 from the petitioner is a letter addressed to the beneficiary congratulating him on promotion to a senior software engineer position. It does not meet the requirements set forth by the regulation at 8 C.F.R. § 204.5(g)(1) for evidence relating to qualifying experience, and thus, cannot be considered primary evidence to establish the beneficiary's requisite five years of progressive experience. Furthermore, this letter provides inconsistent information about the beneficiary's position with the petitioner. While the beneficiary claims to work as a senior software engineer for the petitioner since February 8, 2006, this letter verifies that the beneficiary was promoted to the senior software engineer position on March 15, 2007.

The letters dated October 15, 2004 from [redacted] in Parlin, NJ, dated December 12, 2002 from [redacted] in Pune, India, dated June 13, 2000 from [redacted], and dated August 15, 1997 from [redacted], are all job offer letters. These job offer letters are not the evidence that the above quoted regulation requires. Therefore, these letters failed to demonstrate that the beneficiary possesses five years of progressive experience required for the proffered position in this case.

The petitioner submitted two correspondence letters and a certificate from [redacted] in Mumbai, India. The first correspondence, dated January 12, 1999, offered the beneficiary a job training for six months from January 13, 1999 to July 12, 1999; the second correspondence, dated July 19, 1999, offered the beneficiary another six months of job training from July 20, 1999 to January 19, 2000; and the certificate of training dated November 6, 1999 certifies that the beneficiary completed two periods (01/13/1999-07/12/1999 & 07/20/1999-10/30/1999) of training as part of curricular for Masters in Computer Engineering & Software Technology. However, the ETA Form 9089 does not require any training for the proffered position, nor does the ETA Form 9089 indicate that job training alone or combined with experience would be accepted alternatively to meet the five years of progressive experience requirements. Therefore, the beneficiary's training cannot be considered as part of the requisite five years experience, and further, the training certificate cannot be considered primary evidence to establish the beneficiary's qualifications for the proffered position.

The record contains two experience letters: one is dated June 24, 2000 and from [redacted] in Mumbai, India ([redacted] June 24, 2000 letter) and the other is dated May 31, 2005 and from [redacted] May 31, 2005 letter. The [redacted] June 24, 2000 letter stated concerning the beneficiary's work experience in pertinent part that:

> This is to certify that [the beneficiary] was working with us as a "Programmer Analyst". He had been working with us from 1st November 1999, to 10th June 2000. During this period he has been very hard working, punctual and a responsible person. He has provided to be a valuable for our firm.

This letter is on [redacted] signed by [redacted] as [redacted] of the company, and thus it is a letter from a former employer. However, the letter does not include a specific description of the duties the beneficiary performed as required by the regulation. Without such a specific description of the duties, the AAO cannot determine whether the beneficiary's experience as a "programmer analyst" meets the requirements of experience as a senior software engineer or senior programmer analyst. In addition, the experience verified by the [redacted] June 24, 2000 letter is not supported by the beneficiary's statements on the ETA Form 9089 Section K. Furthermore, this letter only verifies the beneficiary's seven months of experience. Therefore, the petitioner failed to establish the beneficiary's requisite five years of experience in the job offered or in a related occupation of senior programmer analyst with this letter.

The [redacted] May 31, 2005 letter stated concerning the beneficiary's work experience in pertinent part that:

> This is to certify that [the beneficiary] [redacted] was employed in our Organization as "Consultant" during the period 17/12/2002 to 31/05/2005.
>
> We found him sincere, hardworking, technically sound and result oriented during this tenure.
>
> We take this opportunity to thank him for his contributions and wish him success in his future endeavors.

This letter is on [redacted] letterhead, signed by [redacted] – Learning & Development of the company, and thus it is a letter from a former employer. However, the [redacted] May 21, 2005 letter does not include a specific description of the duties the beneficiary performed as required by the regulation. Without such a specific description of the duties, the AAO cannot determine whether the beneficiary's experience as a "consultant" meets the requirements of experience as a senior software engineer or senior programmer analyst. In addition, this experience letter provided inconsistent information about the beneficiary's position with this company. While the beneficiary states on the ETA Form 9089 Section K that he worked for this company as a "Senior Software Engineer," the [redacted] May 31, 2005 letter verifies that the beneficiary worked as a "Consultant." Furthermore, this letter verifies the beneficiary's two years and five months of experience. Therefore, the petitioner failed to establish the beneficiary's requisite five years of experience in the job offered or in a related occupation of senior programmer analyst with this experience and the seven months of experience with [redacted]

Therefore, the petitioner did not establish with regulatory-prescribed evidence the beneficiary's prior at least five years of progressive experience as a senior software engineer or senior programmer analyst, and further failed to establish that the beneficiary is qualified for the proffered position.

The beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," but does not have the required five years of progressive experience in the job offered or the specialty, and thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. Therefore, the beneficiary does not meet the job requirements on the labor certification. For this reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.